**IN THE HIGH COURT OF UTTARANCHAL, NAINITAL.**

**No. 10- COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING.**

[ Chapter VIII, Rule 32(2) (b)]

**Government Appeal No. 1006/2001**
**(Old No. 1028/1981)**

State ... Appellant.

Vs.

Puran Singh .. Respondent.

Decided on 25-10-2005

A.F.R. ( Approved for Reporting)
~~Not Approved for Reporting~~

**( Irshad Hussain, J.)**

**( B.S.Verma, J.)**

Dated: 25-10-2005.

**In the High Court of Uttaranchal, at Nainital.**

**Government Appeal No. 1006/2001**
**(Old No. 1028/1981)**

State ….. Appellant.

Vs.

Puran Singh S/o Bhagchand
R/o Village Akhori,
Patwari Circle Barab, Tehsil
Ukhimath, District Chamoli .. Respondent.

**Sri A. Rab, learned Addl. G.A. for the Appellant-State.**
**Sri Rajendra Kotiyal, learned counsel for the respondent-accused.**

**Coram: Hon'ble Irshad Hussain, J.**
**Hon'ble B.S. Verma, J.**

**Dated: 25-10-2005**

**( Per: Hon'ble Irshad Hussain, J.)**

This criminal appeal by leave under Section 378(3) of the Code of Criminal Procedure has been preferred by the State Government against the acquittal of respondent- accused Puran Singh on the charge under Section 302 I.P.C., per judgment dated 6.2.1981, passed by the then Sessions Judge, Chamoli in sessions trial No. 15/1979.

2- The background facts, as unfolded during the trial, are as follows:-

One Pushu had two sons, Bhawan Singh and Baghchand. Bhawan Singh died leaving behind his widow Smt. Rukmani. Baghchand also died leaving behind four sons, viz. Shivraj Singh, accused Puran Singh, Rajpal Singh deceased and Indra Singh. These four brothers reside in the jungle at a distance of about two kilometers from village Akhori, Patwari Circle Barab, Tehsil Ukhimath, District Chamoli. There was dispute between these four brothers relating to the property held by Smt. Rukmani Devi and out of these four brothers accused Puran Singh used to espouse the cause of the said widow.

3- In the month of August, 1979 Smt. Ramdei (P.W.5), the daughter of Shivraj Singh (P.W.4) had come to her parents house in village Akhori and was staying there. On 3-8-1979 at about 4 P.M. she was grinding paddy with her deaf and dumb mother Smt. Swanri Devi near the house. At that time accused Puran Singh came towards their cattle shed and started beating she-buffalo of Shivraj Singh.

Smt. Ramdei and her mother raised an objection. Accused got displeased and caught the wife of Shivraj Singh by her hair in order to beat her. Shivraj Singh happened to reach there and cautioned the accused who then went inside his room and brought his licensed gun, exhibit-1, and fired a shot towards Shivraj Singh, who luckily escaped unhurt. On hearing the noise Indra Singh (P.W.2) and Rajpal Singh deceased came out of their rooms to inquire about the incident. The accused then started showing his anger towards these two also. Both of them thus decided to retreat from there but were chased by the accused carrying the gun. Indra Singh (P.W.2) asked Rajpal Singh deceased to run fast and when deceased turned his face backwards to see as to how far was the accused he was fired at by the accused and the gun shot his him on the face and head. Rajpal Singh fell then and there on the ground. In the meantime Smt. Bardei (P.W.3) wife of Indra Singh and Km. Bimala (P.W.6) the minor daughter of Rajpal Singh deceased and other children of the family reached near that place while returning after washing the utensils and clothes in a rivulet. They were thus able to see this incident. Indra Singh was then put to threat by the accused so he ran inside his house and got himself saved. It was then found that Rajpal Singh had become unconscious and remained so till he breathed his last.

4- It is also the prosecution case that thereafter Smt. Ramdei (P.W.5) went towards the Abadi of village Akhori and informed Pratap Singh Pradhan ( P.W.1) about the incident. Pratap Singh then came to the spot of the occurrence with co-villagers and prepared the written report, Ext. Ka.1. It was sent through Balbir Singh to circle patwari Mitra Nand (P.W.8) who received the written report the same day at 6.30 P.M. and for want of availability of the register of check F.I.R. patwari made an entry vide report No.4 of the same date, that is, 3.8.1979 of 6.30 P.M. in the general diary, Ext. Ka.5 and sent information to patwari Bhatwari Sunar who was posted earlier at his place and had taken the register of the check F.I.R. in connection with court evidence at Chamoli. He, thereafter, left for the village of the occurrence with necessary papers along with his peon and Balbir Singh. They managed to reach village Sena Gadsari by 9 P.M. and stayed there in the night. In the morning they started for the village of

the occurrence and reached there at 7.30 P.M. on 4.8.79. Patwari found victim Rajpal Singh lying on a cot in 'Mandua' plot near the houses of the witnesses; the accused and the victim. Victim Rajpal Singh was not responding to any call and he, probably, breathed his last at about 8 A.M. that day. Patwari then prepared a memo, Ext. Ka.6 to that effect in the presence of the village pradhan and other witnesses. At that time peon Amar Singh came there with the register of the check F.I.R. and then the patwari drawn the check report, Ext. Ka.7 on the basis of written report, thereby registering the case against the accused for committing the murder of the deceased. The relevant G.D. entry at report No.5 of 4.8.1979, Ext. Ka.8 was also made at that time. The patwari, thereafter, went to the house of the accused and after arresting him prepared memo, Ext. Ka.9 to that effect. He attached single barrel licensed gun .12 bore and two empty cartridges given to him by the accused, vide memo, Ext. Ka.10. These items were sealed in a packet in the presence of the witnesses.

5- The circle patwari then held inquest on the dead body of the deceased and prepared the inquest report, Ext. Ka.2 and other relevant documents including the diagram of the dead body, Ext. Ka.11 and challan report, Ext. Ka.12. The packed and sealed dead body was dispatched for post mortem, which was performed next day on 5.8.1979 at 5 P.M. by Dr. D.C. Awasthi (P.W.7) of District Hospital, Gopeshwar and post mortem examination report, Ext. Ka.4 was prepared. Patwari circle also prepared the site plan of the place of the occurrence, Ext. Ka.13, seized sample of blood-stained and plain earth vide memos, Ext. Ka.14 and Ka.15 respectively and also attached bloodstained shirt, pant, underwear of the deceased vide memo, Ext. Ka.16. Other formalities of the investigation were also completed that day. Next day on 6.8.1979 patwari again visited the village of the occurrence and recorded the statements of the witnesses Km. Bimala and Smt. Ramdei and in their presence prepared sketch maps, Ext. Ka. 17 and Ext. Ka.18 of the place of the incident. The statements of other witnesses were recorded and on completion of the investigation, charge sheet, Ext. Ka.19 was placed by him against the accused on 29-9-1979.

6- On cognizance being take the accused was sent up to stand trial in the Sessions Court, Chamoli. Charge was framed against the accused under Section 302 I.P.C. by the then Sessions Judge, Chamoli. Accused did not admit the accusations of the prosecution and pleaded not guilty. He admitted that there was dispute relating to the property of Smt. Rukmani who had died some time after the instant incident. She had gifted her property to him by registered gift deed. According to the accused he had been falsely implicated due to enmity resulting from the dispute of property held by Smt. Rukmani. He also gave out that on 3.8.79 Rajpal Singh deceased had gone for hunting with his brother Indra Singh and co-villager Bachan Singh and that Rajpal Singh was injured by the shot discharged from the licensed gun of Bachan Singh by mistake.

7- At the trial, the prosecution, in order to bring home guilt to the accused examined eight witnesses including the four eye witnesses referred above. P.W.1, Pratap Singh Pradhan proved the written report referred earlier and connected by his evidence the various steps taken by the Investigating Officer. He denied to a suggestion that written report, Ext. Ka.1 was got scribed by him after the visit of the patwari in the village. According to him it had rained in the night succeeding the day of the occurrence. P.W.2, Indra Singh, P.W.3, Smt. Bardei, P.W.5, Smt. Ramdei and P.W.6, Km. Bimala the four eye witnesses of the occurrence supported the prosecution version about the actual assault made by the accused by wielding a gun and shot of which had hit the deceased Rajpal Singh on the head and face. P.W.4, Shivraj Singh proved the prosecution case in regard to the even prior to the actual assault on the deceased and how the accused initially reached near the cattle-shed and wanted to assault his wife and daughter Smt. Ramdei and on his intervention he was fired at by gun wielding accused. He escaped unhurt and ran inside the room where-after the accused chased his other two brothers Indra Singh and Rajpal Singh deceased and fired shot hitting Rajpal Singh who later on succumbed to the gun injuries. P.W.8, patwari Mitra Nand, the Investigating Officer of the case gave evidence to prove the steps taken during the investigation and also the reason for preparing the check F.I.R. in the village of the occurrence. P.W.7, Dr. D.C. Awasthi, held autopsy

on the dead body of the deceased as stated above and ante mortem injuries detected on the body of the deceased were as follows:-

(1) Fire arm injury 1 ½ cm in diameter circular in shape with inverted margins on right side of scalp parietal region, 5cm above the top of right ear and 10cm from the outer corner of the right eye with tattooing (impregnated black carbon particles) over and area of 12 cm x 10cm over the right side of face, forehead and around and wound. It was wound of entry.

(2) Fire arm lacerated injury oval shaped 2 ½ cm x 1 cm with irregular everted margins 2cm behind injury no.1. Clotted blood was present around it. It was wound of exit.

(3) Fire arm lacerated wound 1 cm x ½ cm irregular in shape, 2cm below and behind injury no.2. It was wound of exit.

(4) Fire arm lacerated wound 1cm x ¾ cm irregular in shape, 2cm behind injury No.2. It was wound of exit.

On internal examination hoematoma was found present on the right side of scalp and there was a circular hold 1 cm in diameter in the right parietal bone of the skull. Fracture of left parietal bone was also detected. The right cerebral brain sphere was lacerated with clotted blood and chip of bone was present in it. A pallet. Ext. 5 embedded in the right cerebral hemisphere was taken out. There was four ounce of partly digested food material in the stomach. Small intestine was empty and whereas large intestine contained faecal matter. In the opined of the medical officer death was caused due to coma, as a result of head injury sustained by discharge of fire arm shot about two days ago. He also opined that the ante mortem injuries were sufficient in the ordinary course of nature to cause death of the deceased.

8- This all was the evidence of the prosecution. In defence copies of the non-cognizable reports dated 12-6-1977, 8-2-1978, 17-5-1979, Ext. Kha.1, Kha.2, and Kha-3 respectively lodged by the accused against his brothers were filed. Copy of application, Ext. Kha.4 dated 4.7.1979 moved by the accused against his brothers in the court of S.D.M., Ukhimath was also placed on record, besides the certified copy of the gift deed, executed by Smt. Rukmani in favour of the

accused, Ext. Ka. 6 and answer to queries from the court of Pargana Magistrate, Chamoli, Ext. Khpa.7 and Kha.8 pertaining to the applications given by the accused against his brothers.

9- The learned Sessions Judge briefly referred to the evidence of the witnesses and observed that there are no material contradictions in the statements of P.W.2, Indra Singh, P.W.3, Smt. Bardei, P.W.4, Shivraj Singh, P.W.5, Smt. Ramdei and P.W.6, Km. Bimala, the witnesses of the fact. However the learned Sessions Judge on the appreciation of the evidence of the Investigating Officer and informant and the check F.I.R. and the relevant G.D. entry of the registration of the case came to the conclusion that "it is absolutely uncertain that the F.I.R., Ext. Ka.1 had been lodged at the earliest opportunity on 3-8-1979 at 6.30 P.M. and if it was so then there was every occasion for consultation and afterthought." The statement of the accused under Section 313 of the Code of Criminal Procedure as referred in the earlier part of the judgment was also reproduced by the learned Sessions Judge and by laying emphasis on the statement of the accused that Rajpal Singh deceased was injured by a shot fired from the gun carried by co-villager at the time of the hunting observed that "it might or might not be so but in view of the above discussion I do not think that the prosecution has succeeded in establishing the guilt under Section 302 I.P.C. as against the accused to the hilt and beyond all reasonable doubts. At least he is fully entitled for benefit of doubt." Consequently the accused was given benefit of doubt and acquitted of the charge under Section 302 I.P.C. per judgment under appeal.

10- In support of the appeal and with a view to attach vulnerability to the judgment of the learned Sessions Judge several points were urged by the learned A.G.A. It was pointed out that there was overwhelming and unimpeachable evidence of as many as four eye witnesses to prove the manner of fatal assault on the deceased by the gun wielding accused which under no circumstances could have been set at naught merely on the basis of minor infirmities, if any, in the investigation of the case as were highlighted by the learned Sessions Judge. He also submitted that the view taken by the learned Sessions Judge was not the possible reasonable view on the evidence on record

and that the judgment was passed by the learned Sessions Judge in ignorance of the cogent, clear and reliable evidence of the eye witnesses in which the learned Sessions Judge also could not find any material contradictions to raise the least doubt in the veracity of the prosecution case. learned A.G.A. thus urged that it is a fit case in which interference by the appellate court in judgment under appeal is legally called for an envisaged by the provisions of sections 378 and 386 of the Code of Criminal Procedure, 1973.

11- On the contrary learned counsel for the respondent-accused submitted that the background facts and the evidence on the record have to be tested with a pragmatic approach. According to him the inimical atmosphere which prevailed between the accused and his other three brothers including the deceased on account of previous complaints and dispute relating to the property of Smt. Rukmani the suggestion of the defence that the deceased was hit by fire arm shot by mistake in a hunting session in the jungle at the hands of co-villager Bachan Singh is meaningful and in the manner in which the F.I.R. was recorded and adversely commented upon by the learned Sessions Judge do not rule out the possibility of false implication of the accused in the crime. Learned counsel, therefore, submitted that the judgment delivered by the learned Sessions Judge was neither perverse nor unreasonable nor based on no evidence and, therefore, no interference by the appellant court called for to substitute its own finding about the involvement of the accused in the crime on re-appreciation of the evidence. Learned counsel then submitted that in any event if it is found that the learned Sessions Judge filed to make proper and fair appraisal of the evidence of the eye witnesses it will be appropriate to remit the matter to the learned Sessions Judge/trial court for a fresh consideration of the evidence on record and then to deliver the judgment in the sessions trial.

12- In the above backdrop it has to be seen whether the findings of the learned Sessions Judge are wholly unreasonable or perverse and not based on the evidence on record or suffer from serious illegality including the misleading of evidence on record and whether on the reappreciation of the evidence on record the view taken by the learned Sessions Judge was not only possible reasonable view and as

a consequence thereof the impugned judgment acquitting the respondent-accused of the charge under Section 302 I.P.C. is liable to be set aside.

13- As we have noticed earlier the prosecution examined four eye witnesses, viz. P.W.2, Indra is; P.W.3, Smt. Bardei; P.W.5, Smt. Ramdei and P.W.6, Km. Bimala. Another witness P.W.4, Shivraj Singh was also examined to prove the events prior to the actual assault by gun by the accused on the deceased Rajpal Singh. As the houses of the parties are situate in the jungle at a distance of about two kilometers from the Abadi of village Akhori, these relative witnesses were the most natural and probable witnesses of the occurrence and no other villager was expected to be there to witness the incident. This aspect of the matter was also taken in to consideration by the learned Sessions Judge in similar perspective and the presence of any outsider at the scene of the incident was thus not insisted upon towards corroboration of the prosecution version and the evidence of relative eye witnesses.

14- The events preceding the actual assault and the details of the incident itself have been referred in the earlier part of the judgment while describing the facts of the case and unfolded by the evidence during the trial. Consequently the evidence of all these four eye witnesses and also of Shivraj Singh ( P.W.4) was briefly reproduced above. The evidence adduced was to prove that at about 4 P.M. on 3-8-1979 accused Puran Singh picked up his gun from his room when his brother Shivraj Singh (P.W.4) took exception to the indecent behaviour of the accused in picking up the wife of Shivraj Singh by her hair in order to assault her when she and her daughter Smt. Ramdei (P.W.5) were near their cattle-shed and were busy indigenously grinding paddy. Accused after bringing his gun fired a shot on Shivraj Singh who escaped unhurt and ran inside his room to save himself from being harmed by the accused. Shivraj Singh gave out that when he closed himself inside the room his brothers Rajpal Singh deceased and Indra Singh (P.W.2) came there at the door and inquired as to how the gun shot was fired. Out of fear nothing was then heard by Shivraj Singh and he kept himself silently locked inside the room. He stated that after some time he heard noise of gun shot

from the side of water rivulet and soon thereafter his brother Indra Singh gave a call that everyone should remain inside their rooms as accused Puran Singh had fired gun shot at Rajpal Singh deceased. Shivraj Singh came out only after the arrival of the villagers at the scene of the incident and reached at the place where his brother Rajpal Singh deceased was lying injured with fire arm injuries.

15- Since Shivraj Singh gave evidence about the events prior to the actual assault the latter events of the incident were witnessed by the above named four eye witnesses who remained outside and saw as to how Rajpal Singh deceased was chased by accused Puran Singh and was fired at by the gun wielded by the accused and which hit the deceased on the face and head as a result of which Rajpal Singh deceased fell then and there on the ground. Eye witness Indra Singh (P.W.2) gave out that he started running along with his brother Rajpal Singh deceased as soon as the accused started showing his anger towards them and further that when Rajpal Singh deceased turned his face backward, accused fired shot at Rajpal Singh deceased, which caused injuries to Rajpal Singh on the face and head and who fell then and there on the ground. The evidence of Smt. Bardei (P.W.3) wife of Indra Singh and Km. Bimala (P.W.6) the minor daughter of Rajpal Singh deceased prove that they saw the actual incident while they were returning towards the houses after washing the utensils and clothes in the rivulet. Smt. Ramdei (P.W.5) was also already there outside the house with her deaf and dumb mother when the accused first of all wielded the gun against her father and thereafter by chasing Rajpal Singh deceased and Indra Singh again wielded gun against Rajpal Singh deceased who was hit by the gun shot on the face and head and fell then and there in the field some distance away from the houses of the family members and towards the water rivulet from which side Smt. Bardei and Km. Bimala were then coming towards their houses. The evidence of this witness is also thus definite in regard to the events not only prior to the actual assault by the accused on Rajpal Singh deceased by the gun but also in regard to the events prior to the actual assault. She has also thus not only corroborate the evidence of her father Shivraj Singh (P.W.4) but also proved the

manner in which the accused wielded gun against Rajpal Singh deceased.

16- All these five witnesses were cross-examined at length but nothing of significance could be brought on record as may in any way assail their credibility and raise any doubt in the prosecution version in regard to the actual assault by the accused on Rajpal Singh deceased by wielding gun and in the process causing injuries to the victim on the face and head which resulted in his death as proved by the medical evidence in the case as referred above. It need to be repeated that the learned Sessions Judge discussed the evidence of all these five witnesses including the four eye witnesses in sufficient detail in his judgment and did not find anything of substance or any infirmity in their evidence as may entail rejection of their evidence or any of them. The learned Sessions Judge categorically endorsed in the judgment that there are no material contradictions in the statements of Indra Singh, P.W.2; Smt. Bardei, P.W.3; Shivraj Singh, P.W.4; Smt. Ramdei, P.W.5 and Km. Bimala, P.W.6 and there can be no doubt that the said inference was rightly drawn by the learned Sessions Judge. In other words the definite and cogent evidence of these eye witnesses of the prosecution prove beyond doubt that the occurrence took place in the manner as alleged and that accused Puran Singh fired shot from his gun hitting his brother Rajpal Singh deceased on the face and head at about 4 P.M. on 3-8-1979 near the houses of the accused, the deceased and the witnesses situate at a distance of about two kilometers from the Abadi of village Akhori. The evidence is also to the effect that Rajpal Singh deceased had become unconscious on receiving the gun shot injuries and was thereafter kept at that place where he fell down under a makeshift thatch to protect him from the inclement weather and the rain. Rajpal Singh deceased was not able to speak and as stated by these witnesses and also by village Pradhan Pratap Singh (P.W.1) and circle patwari Mitra Nand Bhatt (P.W.8) Rajpal Singh deceased breathed his last in the early hours of the morning of 4-8-1979 when the circle patwari had already reached there to investigate the crime. The medical evidence referred above also prove beyond doubt that Rajpal Singh died due to coma as a result of head injuries sustained by discharge of fire arm shot near

about the said time as stated to by the witnesses. The leaned Sessions Judge also referred to the medical evidence of the case and no inconsistency between the ocular and medical evidence has been noticed warranting any reference in that regard in the judgment. In other words the medical evidence of the case fully corroborate the prosecution case about the time of the occurrence and that the death of Rajpal Singh deceased was homicidal and that whosoever has caused him fire arm injuries had intended to commit his murder. The reliable evidence of the prosecution as referred above prove beyond doubt that non other than accused Puran Singh was the author of the fatal fire arm injuries of Rajpal Singh deceased. In the face of the definite and cogent evidence of the eye witness in the case the defence case that Rajpal Singh deceased sustained fire arm injuries in accidental fire from the gun of Bachan Singh during hunting session outside the village on 3-8-1979 does not at all warrant even the least acceptance.

17- It shall also not be out of place to mention that accused is an ex-army personnel and had never hesitated in placing his grievance against his brothers on record as and when according to him such occasion arose and he had preferred to lodge reports against them. Three reports Ext. Kha-1 dated 12-6-1977, Ext. Kha-2 dated 8-2-1978 and Ext. Kha.3 dated 17-5-1979 also referred in the judgment of the learned Sessions Judge were lodged by the accused against his brothers. Accused has also made queries from the Pargana Magistrate concerned about the action taken on his reports and this is evidence by two questionnaires, Ext. Kha-7 and Ext. Kha.8 submitted by him in the year 1980. This shows that accused was not a type of person who was not able to interact with the officer concerned to put forward his grievances against his opponents as and when necessity was felt. In short the accused was always conscious of his rights and a person of such temperament and tendency would not have remained silent when he was nominated as an accused in the F.I.R. and was taken in to custody next day by the investigation officer but was later on released on bail. In that event he was expected to have at the first available opportunity on being released on bail or even earlier could have made his defence case public by making applications to the higher authorities that his brother Rajpal Singh deceased had in fact

sustained gun shot injuries accidentally by the gun shot to Bachan Singh during a hunting session. Such a defence stand was for the first time brought on record at the instant of the accused by way of a suggestion given to the eye witness Indra Singh ( P.W.2) when his statement was recorded in the sessions trial on 3-7-1980, that is, after about a year of the occurrence. The conduct and attending circumstances thus also lend credence to the inference that the defence suggestion carry no meaning whatsoever so as to make even a smallest dent in the prosecution version and its evidence.

18- The learned Sessions Judge however found some fault on the basis of the evidence of the investigation officer circle patwari Mitra Nand Bhatt (P.W.8) in the preparation of the check F.I.R., Ext. Ka.7 and G.D. reports, Ext. Ka.5 and Ext. Ka.8 and came to the conclusion that since these documents do not appear to have been prepared on the date and time as shown thereon on these papers it becomes absolutely uncertain that the F.I.R., Ext. Ka.1 had been lodged at the earliest opportunity on 3-8-1979 at 6.30 P.M. and if it was so then there was every occasion for consultation and afterthought. Referring to these aspects and the defence case as set up by the accused and referred above the learned Sessions Judge then observed that “it might or might not be so but in view of the above discussion I do not think that the prosecution has succeeded in establishing the guilt under Section 302 I.P.C. as against the accused to the hilt and beyond all reasonable doubts” and on this premise the learned Sessions Judge proceeded to give benefit of doubt to the accused and to acquit him of the charge under Section 302 I.P.C.

19- It is surprising that the learned Sessions Judge despite accepting the evidence of eye witnesses as reliable, merely went on to sustain doubt in the prosecution claim and its evidence on account of some irregularity and defect in the investigation by the circle patwari and went on to conclude that the F.I.R. had not probably been lodged at the earliest opportunity and there was every occasion for consultation and afterthought to spun out a version against the accused. The learned A.G.A. persuasively argued that the stand taken by the learned Sessions Judge was against the settled legal principle that any irregularity or even an illegality during the investigation should not be

treated as a ground to reject the prosecution case and further that the defective investigation by itself could not have been made a ground for acquitting the accused. On the other hand learned counsel for the accused respondent supported the observation of the learned Sessions Judge and submitted that if doubt was created about the genuineness of the F.I.R. the very substratum of the prosecution case the learned Sessions Judge was fully justified for the reasons stated in the judgment to come to the above conclusion and to give benefit of doubt to the accused respondent. Having carefully considered the respective submissions and the material on record, we are of the firm view that the view taken by the learned Sessions Judge was erroneous and unreasonable and that the evidence on record do not suggest that the F.I.R. was ante-timed and it was the outcome of deliberations and consultation to falsely implicate the accused.

20- The reason being that after the incident village people including the village Pradhan Pratap Singh (P.W.1) reached at the scene of the incident and P.W.1, then got prepared the written report, Ext. Ka.1 and sent it to circle patwari through co-villager Balbir Singh in the evening of the incident itself, that is, 3-8-1979. It is not in dispute that the distance between the place of the occurrence and the headquarter of the circle patwari is about six kilometers. There is definite statement of circle patwari Mitra Nand Bhatt (P.W.8) that Balbir Singh gave him the written report, Ext. Ka.1 on 3-8-1979 at about 6.30 P.M. Considering the distance of only six kilometers it appear highly probable that Balbir Singh was able to deliver the written report to the patwari at 6.30P.M. Despite the receipt of the written report the check F.I.R. was not prepared by the patwari on account to the fact that the erstwhile patwari of the circle had taken the check F.I.R. register to Chamoli for giving his evidence in some case and on account of this P.W.8 made an entry to this effect in G.D. report No.4 of 3.8.1979, Ext. Ka.5 and thereafter he left for the village of the occurrence to take further steps towards the investigation of the crime. The evidence to this effect has been given by P.W.8 and although the narration of the G.D. report No.4 ( Ext. Ka.5) indicate that the complete report may not have been endorsed one and at the same time but the facts remain the same that on 3-8-1979 the check F.I.R.

register was not available with P.W.8 and therefore he proceeded for the village of the occurrence without getting the check F.I.R. prepared. It is in the evidence of P.W.8 that he had sent information to the prior patwari to sent the check F.I.R. register to the village of the incident and next day when the check F.I.R register was received by him in the village of the incident the check F.I.R., Ext. Ka.7 was prepared on the basis of the written report, Ext. Ka.1.In our view even if there was some irregularity in not preparing the complete G.D. report No.4 one and at the same time it can not be safely accepted that even the written report, Ext. Ka.1 was not with the patwari, P.W.8 and it was later on prepared after deliberations to falsely implicate the accused. It is of significance that there is absolutely nothing in the evidence of Pradhan Prata Singh (P.W.1) as may throw any doubt in the genuineness and veracity of the written report, Ext. Ka.1 and that it was scribed in the evening of the incident itself and was delivered to the patwari P.W.8 the same evening at about 6.30P.M. by Balbir Singh. Therefore on the basis of G.D. report No.4 it could not have been said by the learned Sessions Judge that the F.I.R., Ext. Ka.1 was not in existence and was not with the patwari, P.W.8 when he reached the village of the incident on 4.8.1979. Further learned Sessions Judge also adversely commented upon the preparation of G.D. report No.5 of 4.8.1979 in coming to the conclusion that it was also not prepared one and at the same time thereby incorporating the steps taken towards investigation by the patwari on 4.8.1979. But that aspect itself also could not have been taken to create doubt in the genuineness of the written report, Ext. K.1 and on whose basis the check F.I.R., Ext. Ka.7 was prepared in the village of the incident on 4.8.1979 when the check F.I.R. register was received there by patwari P.W.8 . At the most it could have been the case of some irregularity or defect in the investigation by the patwari but that at any rate could not have been taken to conclude that the F.I.R., Ext. Ka.1 came in to existence later on after consultation and deliberations to falsely implicate the accused. As stated above the highly reliable and cogent evidence of the eye witnesses do not at all admit of any suggestion that these witnesses and other family members spun out a false story to falsely implicate the accused and the F.I.R. was then accordingly

prepared in concert with the patwari, P.W.8, the investigation officer of the case. In such a situation the learned Sessions Judge was also not justified in drawing an inference that the accused could have been falsely implicated on account of previous enmity and disputes between the brothers arising out of the property held by Smt. Rukmani Devi and who had later on transferred the same by executing the registered gift deed, Ext. Kha.6, dated 27-10-1969 in favour of the accused alone.

21- Learned counsel for the accused-respondent lastly submitted that in view of the provisions of Sections 378 and 386 of the Code of Criminal Procedure, 1973 if one the same evidence adduced in the case two views are reasonably possible, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted and since the learned Sessions Judge had taken a view in favour of the accused this appellate court has no justification to set aside the judgment of acquittal unless it is found that the findings are perverse and not based on the evidence on record or suffers from serious illegality including ignorance or misreading of the evidence on record. In the view of the learned counsel this case does not fall in this category. Alternatively learned counsel submitted that at any rate even if the evidence on record has not been meticulously analyzed by the learned Sessions Judge and the findings are based on ignorance of the evidence on record there will be no justification to set aside the judgment of acquittal and to convict the accused, but only to remit the case to the learned Sessions Judge to hear the counsel for the prosecution and the accused and then to pass a fresh and proper judgment on complete and fair appreciation of the evidence on record.

22- Having carefully appreciated the evidence on record and the conclusion reached by the learned Sessions Judge, we find no substance in the submission of the learned counsel for the accused- respondent and have no hesitation in holding that the view of the learned Sessions Judge is erroneous and unreasonable and not based on the evidence on record. We find no rational justification for the conclusion reached by the learned Sessions Judge that though there are no material contradictions in the statements of the witnesses

of the fact, the F.I.R. of the case which appear to have been prepared after consultation and deliberations create suspicion and that the prosecution has thus not succeeded in establishing the guilt of the accused-respondent to the hilt and beyond all reasonable doubts. In fact the learned Sessions Judge had misread the evidence of the investigation officer on record and has completely ignored the highly reliable and cogent evidence of the eye witnesses on record which was even accepted as such by the learned Sessions Judge. The view of the learned Sessions Judge, therefore, deserve to be interfered with in this appeal against the acquittal of the accused-respondent. We, therefore, allow the appeal, set aside the impugned judgment and order of the learned Sessions Judge, dated 6-2-1981 and hold the accused-respondent Puran Singh guilty of committing the murder of Rajpal Singh deceased. The accused-respondent Puran Singh is thus convicted and sentenced to undergo imprisonment for life under Section 302 I.P.C. His bail bonds are cancelled. He shall be taken in to custody to serve out the sentence.

23- Let the record be sent back to the court concerned for compliance, to be reported to the Court within two months.

**( B.S. Verma, J.)** **( Irshad Hussain, J.)**

ISB